

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY, et al., ) Case No.: C-05-5191 JSW

Plaintiffs, ) **STIPULATION AND [PROPOSED]**  
v. ) **ORDER TO STAY PROCEEDINGS**  
 ) **FOR 90 DAYS**

GALE A. NORTON, Secretary of the  
Interior, et al.

## Defendants.

Case No.: C-05-5191 JSW

**STIPULATION AND [PROPOSED]  
ORDER TO STAY PROCEEDINGS  
FOR 90 DAYS**

11 Plaintiffs Center for Biological Diversity, Natural Resources Defense Council, Greenpeace,  
12 Inc., and Defendants Gale A. Norton, Secretary of the Department of Interior (the “Secretary”),  
13 and the U.S. Fish and Wildlife Service (the “Service”), by and through their undersigned counsel,  
14 say as follows:

15 WHEREAS on February 16, 2005 Plaintiff Center for Biological Diversity filed a Petition  
16 to List the Polar Bear (*Ursus maritimus*) as a Threatened Species under the Endangered Species  
17 Act, 16 U.S.C. §§ 1531 et seq.;

18 WHEREAS on July 5, 2005, Plaintiffs sent Defendants a letter in which Natural Resources  
19 Defense Council and Greenpeace, Inc., joined as Petitioners and submitted additional information  
20 in support of the Petition to List the Polar Bear;

21 WHEREAS on October 11, 2005, Plaintiffs sent Defendants a 60-day Notice Letter of Intent  
22 to Sue for violating the Endangered Species Act by failing to issue the 90-day petition finding;

23 WHEREAS on December 15, 2005, Plaintiffs filed a Complaint against Defendants,  
24 alleging violations of the Endangered Species Act, 16 U.S.C. §§ 1531 et seq., and specifically  
25 challenging Defendants' failure to issue the required 90-day petition finding on Plaintiffs' Petition  
26 to List the Polar Bear submitted on February 16, 2005;

27 WHEREAS on December 22, 2005, Plaintiffs sent Defendants additional information in  
28 support of the Petition to List the Polar Bear;

1 WHEREAS Plaintiffs filed a Motion for Summary Judgment on January 18, 2006, seeking  
2 an order compelling issuance of the 90-day finding on the Petition to List the Polar Bear by a date  
3 certain;

4 WHEREAS Defendants issued a positive 90-day finding on the Petition to List the Polar  
5 Bear on February 9, 2006, and initiated a public comment period and a status review of the species;

6 WHEREAS the Endangered Species Act requires that Defendants, following a positive 90-  
7 day finding, complete a 12-month petition finding pursuant to 16 U.S.C. § 1533(b)(3)(B) within  
8 twelve months of receipt of a petition to list a species;

9 WHEREAS Plaintiffs have sent Defendants a 60-Day Notice of Intent to Sue alleging  
10 Defendants are now in violation of their duty to make a 12-month finding on the Petition, which  
11 is required to be sent 60 days prior to filing such claim, and Plaintiffs intend to amend their  
12 Complaint to include such claim once the 60 day statutory period has run;

13 WHEREAS the Parties agree that settlement of this action is in the public interest and is an  
14 appropriate way to resolve the dispute between them, and that venue is proper and the Court has  
15 jurisdiction over the Parties and subject matter of this action;

16 WHEREAS the Parties have reached an agreement in principle that will resolve Plaintiffs'  
17 claims relating to both the 90-day and 12-month findings through settlement, without the need for  
18 further litigation, and the Parties intend to submit a Settlement Agreement to the Court resolving  
19 this case shortly after the filing of Plaintiffs' amended complaint;

20 WHEREAS, the hearing on Plaintiffs' Motion for Summary Judgment is currently set for  
21 April 28, 2006, at 9:00 am;

22 WHEREAS, a case management conference is currently set for May 12, 2006, at 1:30 p.m.,

23 WHEREAS March 29, 2006 is the last day for the Parties meet and confer regarding initial  
24 disclosures, early settlement, ADR process selection, and discovery plan and the last day to file the  
25 Joint ADR Certification with stipulation to ADR process or the Notice of Need for ADR Phone  
26 Conference;

27 WHEREAS April 12, 2006 is the last day for the Parties to complete initial disclosures or

1 state objection in the Rule 26(f) Report, and to file and serve the Rule 26(f) Report;

2

3 **NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS**  
4 **FOLLOWING:**

5 1. The Plaintiffs' Motion for Summary Judgment is withdrawn and the hearing date  
6 currently set for April 28, 2006 shall be taken off calendar;

7 2. The case management conference currently set for May 12, 2006 shall be taken off  
8 calendar;

9 3. All other proceedings shall be stayed for a period of 90 days following the Court's  
10 approval of this stipulation;

11 4. If the Parties have not filed the anticipated Settlement Agreement within 90 days of  
12 the Court's approval of this stipulation, the Parties will submit a joint status report to the Court at  
13 that time;

14

15 Dated: March 23, 2006

16

17 /s/ (By Kassia R. Siegel with consent)

18

19 Paul D. Lall  
Attorney for Defendants GALE NORTON and the  
UNITED STATES FISH AND WILDLIFE  
SERVICE

20

21 Dated: March 23, 2006

22

23 /s/  
24 Kassia Siegel (CA Bar No. 209497)  
25 Attorneys for Plaintiffs CENTER FOR  
26 BIOLOGICAL DIVERSITY, NATURAL  
27 RESOURCES DEFENSE COUNCIL, AND  
28 GREENPEACE, INC.

27 \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.  
2

3 Dated: March 23, 2006

4   
5 JEFFREY S. WHITE  
6 UNITED STATES DISTRICT JUDGE  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28